

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

BARRY McDIARMID,

Petitioner,

v.

ERIC HOLDER, et al.,

Respondents.

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8:10-cv-00283-LSC-FG3

**FINDINGS AND
RECOMMENDATION**
(Fed. R. Civ. P. 4(m))

This matter is before the court on the court's own motion pursuant to Fed. R. Civ. P. 4(m). Having failed to timely effect service on the defendants, the plaintiff was ordered to either "(1) effect service on the defendants and file proof of same with the court or (2) show cause why this case should not be dismissed without prejudice for failure to effect service within the time limit specified in Fed. R. Civ. P. 4(m)." (Doc. 3, Order to Show Cause filed 12/27/2010). The deadline for achieving these tasks was set for January 18, 2011.

No summonses were ever requested or issued in this case. Plaintiff's attorney responded to the Order to Show Cause on January 18, 2011 by filing a "certificate of service" (Doc. 4) indicating that he mailed copies of the Petition to F. Gerard Heinaur, Attorney General Eric J. Holder, Michael Chertoff, and Christina Poulos on January 18, 2011.

The court finds that the plaintiff has not taken appropriate action to effect service of summons and the Petition on the defendants in compliance with the requirements of Fed. R. Civ. P. 4(i)(1) & (2), and the plaintiff has not shown good cause for his failure to do so.

IT IS RECOMMENDED that this case be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m).

DATED February 4, 2011.

BY THE COURT:

**s/ F.A. Gossett, III
United States Magistrate Judge**